

LEGISLATIVE OVERSIGHT OF INTELLIGENCE  
ACTIVITIES:  
THE U.S. EXPERIENCE

R E P O R T

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## LEGISLATIVE OVERSIGHT OF INTELLIGENCE ACTIVITIES: THE U.S. EXPERIENCE

### PREFACE

We live in a time of astounding change: the Cold War has ended; new democratic states have arisen in Eastern Europe and the former Soviet Union; and autocratic regimes have given way to democratic ones in parts of Africa and much of Latin America. These changes have led to discussions in both new and established democracies with respect to the proper role for intelligence agencies in the post-Cold War era. A substantial number of democratic states are looking, for the first time, at establishing legislative oversight of their intelligence and security services. They see such oversight as an essential element of a democratic state, as a means of preventing a return to repressive practices, or as a means of providing legitimacy and direction to intelligence and security activities in the absence of a clearly defined threat to their national security.

Over the past two years, the Senate Select Committee on Intelligence has received requests from the parliaments of more than a dozen countries for advice as they seek to establish systems of oversight for their intelligence activities. The Committee has provided such assistance on an ad hoc basis by arranging staff briefings and by providing copies of the relevant background materials. In some cases, while travelling abroad, committee members and staff have provided counsel on oversight matters to other governments.

The continuing demand for such assistance suggests that a more comprehensive treatment of intelligence oversight would be of real benefit. Hence, the Committee has decided to publish this booklet providing a concise description of the U.S. system: its structure, operation, functions, and evolution over time. The appendix to this booklet contains the relevant law and Executive branch documents which form the framework for the system, as well as several commentaries from outside observers regarding the oversight process in the United States.

While the primary motivation of the Committee is to provide a convenient, readily usable reference to assist the legislative bodies of other governments, we also commend this booklet to American citizens who are interested in the evolution and operation of the congressional oversight process.

SENATOR DENNIS DECONCINI,  
*Chairman.*

SENATOR JOHN W. WARNER,  
*Vice Chairman.*



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ROBERT M. GATES  
DIRECTOR OF CENTRAL INTELLIGENCE  
BEFORE  
THE WORLD AFFAIRS COUNCIL OF BOSTON  
FRIDAY, 15 JANUARY 1993, NOON  
BOSTON, MASSACHUSETTS

### American Intelligence and Congressional Oversight

Today marks the last speech that I will give as Director of Central Intelligence. I have decided to use this opportunity to talk with you about Congressional oversight of intelligence and how it can be strengthened.

The idea of Congressional oversight of intelligence first came up a year after CIA was created by the National Security Act when, in 1948, there was a motion to establish a joint committee to oversee intelligence. This motion, which failed to get out of committee, was the first of nearly 150 proposals concerning intelligence oversight that would follow over the next 25 years. Just two of those proposals made it to the floor for action and both were

defeated by greater than 2 to 1 margins.

Not that CIA was totally without Congressional oversight in the first quarter century of its existence. The Armed Services Committees and Defense Subcommittees of the Appropriations Committees had authorizing and appropriating jurisdiction for the Intelligence Community.

However, there were never more than a few Members of either House that actually participated in this oversight of intelligence. The number of hearings was limited and, according to one expert on Congress and intelligence, there were several years where the Senate oversight bodies met only once or twice.

By the early 1970s, the Director or Deputy Director averaged some 30 to 35 committee appearances annually. There were even briefings for the Congress on covert action. For example, Foreign

Relations Committee Members were briefed as early as 1962 on covert assistance to the Myong in Laos and during the ensuing years Foreign Relations and Armed Services Committees of the Senate were briefed on a total of 28 occasions on this effort alone.

Even so, Chairman of the Intelligence Subcommittee of the House Armed Services Committee Lucien Nedzi accurately described the overall state of Congressional oversight in a talk to the CIA Senior Seminar in November 1973, when he said, "It is a sobering experience for me, as Chairman of the House Intelligence Subcommittee, to find our Subcommittee still in the process of defining ourselves, still exploring (or worse yet, just beginning to explore) what we can do and what we must do."

The pattern of oversight just described was not a product of CIA or Intelligence Community reluctance to appear before the Committees or inform



the Congress. The Subcommittees were regularly informed of the most significant covert programs and routinely briefed on the intelligence budget. As one observer put it, "The mechanism for oversight clearly existed; what was missing was an interest in using it -- or more properly speaking, a consensus that would legitimize its use."

By the mid-1970s, a broad consensus emerged for the creation of a permanent and more effective Congressional oversight capability. Both the Rockefeller Commission and the Church Committee separately recommended creation of committees to oversee intelligence, and those recommendations were enacted into law by the Senate in May 1976 through Senate Resolution 400. The House acted a little over a year later in July 1977 with House Resolution 658.

In the early 1980s, Congress demonstrated its support for good

intelligence and also its interest in stronger oversight both with support for increased funding and with three major pieces of legislation affecting intelligence. First was the Classified Information Procedures Act that provided for the protection of classified information -- especially intelligence information -- in courtrooms. Second was the Intelligence Identities Protection Act. Following the assassination of CIA Station Chief Richard Welch, the Congress moved to make it illegal to publicly identify a CIA officer who was under cover.

Finally, and most significantly, the Intelligence Oversight Act of 1980 reduced the number of Committees overseeing the Intelligence Community from eight to two -- the Select Committees of the House and Senate, but also established certain obligations on the part of CIA and the Intelligence Community: to keep the Committees fully and currently informed of all

intelligence activities, to furnish information deemed necessary by the Oversight Committees, and to report illegal or failed intelligence activities in a timely fashion. The legislation also revised the notification procedures for covert action, again reducing the number of Committees notified from eight to two.

So where do we stand today? Over the past sixteen years, CIA accountability and legislative oversight have grown enormously. With this oversight, CIA and the other intelligence agencies have become the most scrutinized intelligence services in the world. It would be difficult for any secret intelligence organization to be placed under this microscope of intense review. And yet, I believe, under these circumstances we not only remain effective and capable, we enjoy a legitimacy and an acknowledged role in our government not shared by any foreign intelligence service. It is fair to say today that

there is not a single planned or ongoing activity in the Intelligence Community that it is not in some way or another subject to review by at least two Committees of the Congress.

To give you some insight into the breadth of this relationship, let me cite a few statistics. In 1992, representatives of the agencies of the American Intelligence Community met more than 4000 times with Members and staff of the Congress in either briefings or other meetings. We provided over 50,000 documents to the Congress and responded to almost 1200 questions for the record or Congressionally-directed queries.

Now, let me address two areas of special interest to Congress. First, the budget. The Intelligence and Appropriations Committees of the House and Senate take seriously their oversight responsibility to review the Intelligence Community budget and examine planned intelligence

expenditures into the billions of dollars. They scrutinize budget line items in the thousands. In so doing, they pass judgment on virtually every plan and program. And Congressional oversight of the intelligence budget does not end after funds have been appropriated. We must gain the approval of up to six Congressional Committees when we reprogram money beyond a minimal amount and we must notify four Congressional Committees of any withdrawal of money from the CIA's reserve fund for contingencies. Furthermore, both intelligence authorizing committees and the House Appropriations Committee have created their own audit units and these have access both at Headquarters and in the field to our books and our expenditures.

The second area of special interest to Congress is covert action -- actions which support the foreign policy objectives of the United States but cannot be achieved by overt means. The

United States has the most elaborate set of checks and balances on its covert activities of any country on earth.

Few realize that most covert action proposals originate in the National Security Council or the State Department. But before any proposal for covert action moves forward, it is subject to intense scrutiny inside the CIA. The Covert Action Review Group -- which includes the Executive Director of the Agency, the four Deputy Directors, the General Counsel, the Directors of Congressional and Public Affairs and the Comptroller -- examines the critical legal issues of the covert action and also asks an important question: "If this program becomes public, will it make sense to the American people?"

Under the laws governing the oversight of intelligence, covert actions are conducted only after the proposal has been reviewed and approved

by the National Security Council, the Attorney General, and finally, the President. The President's approval is embodied in a written Presidential Finding -- which explicitly acknowledges that this operation is important to the national security of the United States. For the last seven years, every finding has been briefed to the Congress within 48 hours of signature.

The intelligence committees hold hearings to review new covert actions approved by the President, and they regularly examine all on-going actions. These two committees not only know the nature of the covert action that we are undertaking, but they know exactly how we are doing it, and they monitor every dime that is spent on it. This is no pro forma exercise. Congress can -- and has -- exercised control over CIA covert actions by denying us the funds needed to carry them out -- just as it approves funds for all covert action that are undertaken.

Contrary to the image sometimes portrayed, most American intelligence officers welcome Congressional oversight -- and all are subject to it. We see these Congressional mechanisms as surrogates for the American people, ensuring that our intelligence services operate within the law but also in ways consistent with American values. Congressional oversight is a protection against misuse of the Agency by Executive authorities and Congressional review of our intelligence publications helps guard our objectivity. Intelligence professionals believe that effective oversight is vital if intelligence is to have a future in this most radically democratic country in the world.

The vast majority of CIA employees have grown up under Congressional oversight. More than 75% of the Agency's population has entered on duty since the creation of the Oversight Committees. They understand the rules



and appreciate the value of and reasons for oversight.

Having said that, the process by which American intelligence agencies became accustomed to and positive about Congressional oversight was a long, and often difficult, one. Especially in the first half of the 1980s -- and occasionally afterward -- there were periodic crises of confidence brought on by concern on the part of the Oversight Committees that they were not being dealt with candidly, in a full and forthcoming manner. These concerns were too often justified, at least in some measure. However, in recent years the relationship between American intelligence and the Congress has improved steadily to reach its current excellent state.

Yet, just as we have focused in recent years on improving our performance in this relationship, today I would like to reflect from our perspective on several problems on the

Congressional side which, if addressed, could strengthen and enhance oversight while contributing to the further improvement of our intelligence.

My first and most important concern is that very few Members of the Intelligence Oversight Committees (or the Appropriations Committees) appear to devote much effort or time to their intelligence oversight responsibilities. Only a handful of Members in both Houses have taken the time to visit the intelligence agencies and to make the effort required to gain some knowledge and understanding of what is a very complicated and sophisticated undertaking. This places an enormous burden on the Chairmen and Ranking Minority Members. Individual Members from time to time will develop an interest in one or another aspect of our work and acquire some knowledge of that, but the number of those with broad understanding and real knowledge in my judgment can be counted on the fingers of one hand -- and that is

after 15 years of continuous oversight. At the same time, there are too many instances of members of our committees having important misunderstandings, misconceptions or just wrong facts about U.S. intelligence, including their own legislation governing our activities.

Most Members of Congress are among the hardest working people I have ever met. But they have many Committee assignments, must carry out their responsibilities to constituents, and they have a multitude of other obligations. The sad result is that Committee hearings and briefings are usually not well attended and it is my experience that the record is getting worse, not better.

Let me give you one example. We had a single budget hearing for Fiscal Year 1993 in the Senate Intelligence Committee last spring. The heads of all of the intelligence agencies were present. Of the 15 Members of the

Committee, the Chairman and a handful of members, perhaps three or four, showed up. A half-hour or so into the hearing, it was recessed for a vote and when the hearing resumed a short while later, the Chairman and only two or three members returned. All but the Chairman were gone within 20 minutes. The result is that for the single most important hearing of the year -- on the budget of the entire Intelligence Community -- only Chairman Boren was present throughout.

By the same token, the next day there was a hearing on covert action and 12 out of 15 Senators attended and stayed throughout -- and that for a covert program that is but a fraction of one percent of our total budget, and that is just one-tenth the size of the program two years ago, and where there are virtually no controversial activities under way. Budget hearings on the House side were often attended only by the Chairman, the Ranking Minority Member, and a very small

number of others, typically dropping in for a few minutes at a time.

I know that the Members can read the record of the hearing, but how many really do? The result is that enormous responsibility then falls to the staffs of the Committees. They are neither elected nor confirmed by anyone, and yet they acquire enormous influence over the structuring of issues, as well as the attitudes and votes of the members.

My concern, then, is not oversight, but the lack of attention and knowledge and time on the part of too many members of the Intelligence and Appropriations Committees. This, in turn, means that in this most sensitive area of American government, anonymous staff members with little or no experience in intelligence or its use by the Executive acquire enormous power over the programs and directions of American intelligence.

To make matters worse, Congressional rules approved in the mid-1970s established time limits on Members' service on the Intelligence Committees -- eight years in the Senate, six years in the House. As a result, just when an interested or concerned member begins to acquire some knowledge and understanding of our work, he or she is rotated off the Intelligence Committee -- unlike most other Committees of the Congress.

So my major complaint with Congressional oversight of intelligence is that there is not enough of it -- that is, by the Members of Congress themselves. Now, I am not naive. I know how the system in Congress works, and I know that the situation that I describe prevails in nearly all other areas of government as well. But, as we reduce the size of our military and contemplate major changes in the structure and size of American intelligence, I would argue strongly that these decisions are too important

to be left to staff. Those in Congress who are selected for these Committees -- and I am told that there is high interest in joining these Committees in both Houses -- should be expected to invest the time necessary to gain an understanding of the intricate and fragile system that they seek to change. Our national security depends upon it.

The second concern that I have involves the way in which Congress is organized to deal with our budget. Again, we are on the receiving end of a larger problem identified by Congressional reformers. In past years, the Chairmen of our two Intelligence Committees have devoted enormous effort to reviewing our budget in great detail and making recommendations with respect to that budget. Until recently, the Appropriations Committees were willing to defer in considerable measure to the Intelligence Committees -- and would usually see to it that the

Appropriations bills paralleled the recommendations of the Intelligence Authorizing Committees. However, in the last two years or so, the appropriators have shown considerably less willingness to defer to the Intelligence Committees with the result that these two bills -- the intelligence authorization bill and the separate appropriations bill -- are often very different. As a result, when the appropriators tell us to do one thing and the Intelligence Committees have not acted or disagree, we are paralyzed -- caught in the middle.

Let me give you an example. Last year, the Appropriations Committees approved several hundred million dollars more for intelligence than did the authorizing Intelligence Committees. We went back to all of the Committees in the spring and asked that a substantial portion of that money be approved by the Committees so that we could enhance our efforts on



nonproliferation, counternarcotics and certain other high priorities. Everyone agreed with our intended use of the money, but because of minor differences and procedural squabbles among the Appropriations, Intelligence and Armed Services Committees, it took us five months of intense effort to get these transfers approved. I don't know anyone in Congress who believes that is how the system is supposed to work.

We in intelligence also are becoming vulnerable to another common practice but one from which heretofore we have largely been protected -- insistence by individual Members on funding of pet projects before they will approve our budget. At a time of significantly declining resources, this is a dangerous trend that threatens to weaken our intelligence capabilities by forcing us to spend money for programs that we do not seek and that we find wasteful.

Let me conclude by making three recommendations for strengthening Congressional oversight:

-- First, Congress should end the practice of rotating Members on the Intelligence Committees. The fear in 1976 that Members of the Committees would be co-opted by the intelligence services and lose their ability to be critical has proven unfounded. At the same time, the rotation has contributed to a lack of expertise, knowledge and understanding on the part of Members of the Oversight Committees of what U.S. intelligence does, how it does it, and how it can be improved. If it is too hard to end the rotation, at a minimum the period of service should be extended substantially. As Representative Lee Hamilton said in an address at the University of Virginia on 16 December 1986, "The large turnover of Committee Membership every six years produces a loss of institutional memory {that} hinders effective oversight."

-- Second, I urge the returning Members of the Intelligence Committees and the new Members to take especially seriously their responsibilities on the Oversight Committees and give them high priority. For the good of the country, they must make the time available to learn about the intelligence agencies that they oversee -- how they do their work, how well they perform, the quality of the people, how they can be improved, and what intelligence capabilities this country will need in the future.

-- Third, and finally, although I realize that it is a naive request, I hope that the Congressional leadership can do something about the conflict between the authorizing committees and the appropriators because the problems created by the disparity in their respective legislation is imposing a great cost on the Intelligence Community both in terms of effective

management and the ability to deal with high priority issues.

In the first nine months of 1992, I personally had some 120 meetings, briefings and hearings on Capitol Hill. Building on the efforts of my predecessor, Judge Webster, over several years to improve our relationship with Congress, one of the achievements of the past year about which I am the most proud was the absence for the first time of a single major problem, incident or controversy in our dealings with the Intelligence Oversight Committees.

I have just issued guidance to every employee of CIA and the Intelligence Community who may appear before Congress that stresses four principles of testifying first articulated by my predecessor, Judge William Webster: candor, completeness, correctness and consistency. I am confident that my successor will devote the same effort, in collaboration with the other leaders

of the Community, to extending this period of cöoperation and confidence-building between the Intelligence Community and the Congress.

I strongly support Congressional oversight of intelligence activities. I believe it is a needed check in our system. But it is also a measure of how far we have come that it is the intelligence professionals who now call for a further strengthening of Congressional oversight -- that is, by the Members of Congress who accept that responsibility.